

REMARKS

This Response is being re-filed to comply with the Notice of Non-Compliant Amendment dated March 2, 2009. Corrections have been made to the status indicators for a few of the claims that were in error in the first filing of this Response.

This application has been reviewed in light of the Office Action dated October 27, 2008. Claims 1, 2, 5-7, 9-11, 38, 39, 41, 42 and 44-56 are pending; claims 48-56 are withdrawn in the October 27, 2008 Action, and the remaining claims stand rejected.

The independent claims 1, 38, 47 and 48 have been amended by this Response. No new matter has been added to the claims; the amendments find support in Figs. 2-4 and at least at paragraphs [0033, 38-39, 42-43, and 46].

Claims 1-2, 5-7, 38-39, 41-42 and 47 stand rejected under 35 U.S.C. § 102(b) in view of Lemke et al. (US 5,255,485). Claims 9-11 and 44-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lemke. These rejections are addressed together.

Lemke does not teach or suggest the claimed invention as recited in the amended independent claims. The claims recite an adjustable orthopedic tool that has a shaft with a proximal and distal portion and a central portion located between those portions. The central portion has an adjustment portion comprising external threads. There is an adjustment mechanism mounted on the adjustment portion of the shaft having internal threads to engage the external threads of the adjustment portion. This allows for the adjustment mechanism to move along the shaft and adjust the distance between the end of the shaft and the fastener engaging portion of the tool. Lemke does not teach or suggest this construct.

Lemke instead discloses a tool for installing roofing fasteners that does not contain a shaft having a threaded adjustment portion. In Lemke, the shaft 106 begins at its proximal end at shaft 120 (top of Fig. 4) and continues along distally through sections 122, 124 (polygonal shape to engage bushing 116), 126, and 128 (7:6-16 "Shaft 106 suitably includes a plurality of contiguous sections 120-128: an end portion 120 suitable for engagement by a standard drill ...").¹ *The shaft has no external threads for mating with an adjustment mechanism.* Rather, Lemke's tool has an outer casing 104 that has internal threads at both ends. The distal end of the casing 104 is threaded to the polygonal cap 102, and the proximal

¹ Lemke uses two numeral 120s – one for the proximal end of the shaft and the other for the external threads of the bushing 116 (7:1-3).

end of the casing 104 is threaded to the bushing 116. The other end of the bushing 116 is threaded to the cap 108. The construction of the Lemke device can be seen in Figs. 4-5 by following the hatch lines for the respective pieces 104, 102, 116, and 108 through which the shaft 106 can slidably pass. Consequently, Lemke does not disclose how to adjust the distance between the distal end of the shaft and the portion to engage the fastener as recited in the pending claims.

Accordingly, Applicants respectfully request that the outstanding rejections be withdrawn and earnestly solicit a notice of allowance for the pending claims. Claims 48-56 should also be allowed – the inclusion of the collar is in addition to the patentable features recited in claim 48 that distinguish Lemke, and thus there is no reason for an additional validity search.

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